

Remarks

Applicant acknowledges the rejection of Claims 1-2 and 8-10 under 35 U.S.C. §102(b) as being anticipated by Marbach (U.S. Patent No. 5,336,403) and under 35 U.S.C. §103(a) as being unpatentable over Marbach for obviousness. Also acknowledged are the rejection of Claims 1-11 under 35 U.S.C. §112, 2d paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant also acknowledges that Claims 3-7 and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. §112, 2d paragraph, by including all of the limitations of the base claim and any intervening claims.

Applicant respectfully disagrees with the grounds for rejection(s) under 35 U.S.C. §102(b) and 35 U.S.C. §103(a).

Anticipation under 35 U.S.C. §102(b) requires that the prior art reference cited show each and every element claimed. Without this showing, anticipation does not exist. *General Elec. Co. v. U.S. Ct. Cl.*, (1978) 572 F.2d 745, 215 Ct. Cl. 636, 198 U.S.P.Q. 65. Claims 1-2 and 8-10 are rejected under 35 U.S.C. §102(b) as anticipated by Marbach. The device taught by Marbach is significantly different in so many respects from the invention recited by the rejected claims that anticipation, as a grounds for rejection, is clearly inappropriate.

Marbach does not teach a device with a generally narrow ring-shaped frame, as recited in new Claim 12. Instead, Marbach discloses a collection bag 30 attached to the housing at exhaust aperture 28. Exhaust aperture 28, which maintains the end of the collection bag 30 in an opened position, is structurally distinct from "a generally narrow ring-shaped frame" for supporting the net around the perimeter of said net. Also, Marbach does not teach "a pole to attach to said frame for holding and manipulating said device." Instead, Marbach teaches a pole (36, 48) attached to "a

handle mounting member 34...disposed atop the housing 10.” The type of frame or its counterpart provided in Marbach to support the net around its perimeter is not even remotely located near the site where the pole is attached to the housing. For these reasons, Marbach is absent at least two of the elements of new Claim 12. Accordingly, as the Section 102(b) rejection cannot stand, it is respectfully requested that the Section 102(b) rejection be withdrawn.

Applicant's invention, as particularly set forth in new Claim 12, is not obvious to any person with ordinary skill in the art to which the applicant's invention pertains in view of Marbach. Thus, Marbach does not teach “a generally narrow ring-shaped frame for supporting the net around the perimeter of said net”. Nor does Marbach teach “a pole attached directly to said frame for holding or manipulating said device.” The Marbach device is a relatively complex submersible swimming pool cleaner utilizing a pressurized water jet and a variety of moveable and other parts, including a hose coupled to an intake fitting for intake of pressurized water from the pool filtration system, wheels to allow the device mobility along the surface of the pool bottom, and a manifold, to achieve its objective. In contrast, applicant's invention is a relatively simple pool cleaning device that includes few parts, and does not rely to any extent on pressurized water to clean and collect debris. Thus, the relatively simplistic nature of applicant's device is in stark contrast to the much more complex device taught by Marbach. Moreover, as applicant's new Claim 12 requires the user to grasp the pole at the same time the bottom closed portion of the net is grasped in the process of emptying the net of debris, and this is clearly not intended by Marbach given the much greater weight of the Marbach device and the cumbersome nature of that structure, applicant's invention would not be obvious in view of Marbach. Thus, as recited in Claim 12, “a means connected to said bottom closed portion inside of said net ... to be used as a means to grasp said bottom closed portion while also grasping the pole in the process of emptying said net of debris” is not made obvious by Marbach. Moreover, it should be clear from the Marbach drawings, since the concept is not addressed in the written specification, that the collection bag 30 needs to be

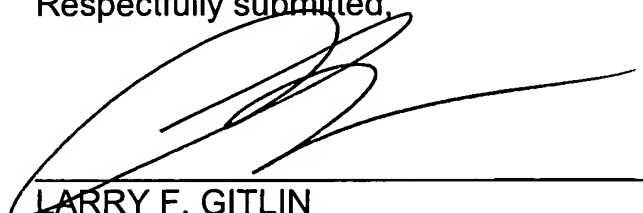
detached from the housing at the exhaust aperture 28 in order to empty the debris. In so doing, one cannot grasp a pole or any similar device in order to properly and efficiently empty the net. Since, in Marbach, there appears nothing to hold onto at the open end of the bag, it seems logical that one must grasp the end with weight 32 holding the bag upside down to literally shake the debris from the net. Thus, though the Marbach device and applicant's invention relate to the same general category of product, namely pool cleaners, this is where the principal similarity ends. The two devices are not only structurally very distinct, they function very differently as well.

Accordingly Claims 1-11 have been amended to overcome the rejection under 35 U.S.C. §112, 2d paragraph. Claims 1-3 have been consolidated and rewritten as amended Claim 1 and Claims 4-10 have been amended to depend therefrom. Claim 11 has been rewritten as new Claim 13 to overcome the examiner's grounds for rejection. Also added is new Claim 12, which traverses the grounds for rejection under 35 U.S.C. §102(b) and §103(a) in view of Marbach.

Thus, pending Claims 1, 4, 5, 6, 7, 8, 9, 10, 12 and 13 are now in condition for allowance, which action is respectfully requested.

Respectfully submitted,

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